**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE ANTONY DOMINIC**

**THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929**

**WP(C).No. 19524 of 2007(Y)**
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**PETITIONER:**
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**K.S.MOHAMMED SAMEER,MANAGING PARTNER,**
**M/S.HI-TECH RUBBER COMPANY,**
**VENGOLA (P.O.)PERUMBAVOOR.**

**BY ADV. SRI.C.K.ABDUL RAHIM**

**RESPONDENTS:**
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**1. THE KERALA FINANCIAL CORPORATION,**
**REPRESENTED BY ITS MANAGING DIRECTOR,**
**VELLAYAMBALAM,THIRUVANANTHAPURAM PIN-695 033.**

**2. THE BRANCH MANANGER,KFC,BRANCH OFFICE,**
**SNDP BUILDING,P.P.ROAD,PERUMBAVOOR,**
**PIN-683 542.**

**BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 19524/2007 Y**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE REPLY GIVEN BY THE R2 DT. 22/08/06.**

**EXT.P2. COPY OF THE JUDGMENT IN WPC NO. 21819/06 DT. 19/3/07.**

**EXT.P3. COPY OF THE REQUEST MADE BY THE PETITIONER DT. 30/3/2007.**

**EXT.P4. COPY OF THE LETTER OF THE R2 TO THE PETITIONER REQUESTING REMITTANCE OF THE AMOUNT, DT. 30/4/2007.**

**EXT.P5. COPY OF THE LETTER BY THE PETITIONER TO THE R2 DT. 7/5/07.**

**EXT.P6. COPY OF THE LETTER OF THE R2 DT. 18/5/2007.**

**EXT.P7. COPY OF THE SLAE DEED EXECUTED AND REGISTERED AS DOCUMENT NO. 4910/07.**

**EXT.P8. COPY OF THE SALE DEED EXEUCTED WITH RESPECT TO SALE OF THE MACHINERIES DT. 14/6/07.**

**EXT.P9. COPY OF THE LETTER BY THE R2 DT. 15/6/2007.**

**RESPONDENT'S EXHIBITS** **NIL.**

*True copy*

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**ANTONY DOMINIC,J.**

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**W.P ( C) No. 19524 of 2007**

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**Dated this the 27th day of September, 2007**

**J U D G M E N T**

Petitioner had availed of a loan from the respondents which was defaulted and this resulted in recovery proceedings. This issue was considered by this Court in W.P. (C) No.21819/2006 which was disposed of directing the competent authority to consider the petitioner's request to redeem the property by paying the amount deposited by the auction purchaser with reasonable interest. The Auction purchaser was the additional 5th respondent in that case.

2. Accordingly, Exhibit P4 letter was issued by the Corporation informing the petitioner, inter alia, that the Corporation shall redeem the property on settlement of the loan account under One Time Settlement Scheme /Closure of the loan. Thereupon, the petitioner responded stating that the said letter was not in terms of the directions issued by this Court and the Corporation gave Exhibit -P6 reply without any commitment on its side.

3. In the meanwhile, Rs.8.6 lakhs with 15% interest thereon was deposited by the petitioner in terms of the

directions of this Court and thus the 1st respondent had realised the amount for which the property was bid in the auction. Even thereafter, when the respondents refused to release the property of the petitioner by redeeming the mortgage, this writ petition was filed seeking a direction to the respondents to release the property by redeeming the mortgage. A counter affidavit has been filed by the respondents in which it is stated that their anxiety is that if the primary security is released, the co-obligants will also get released from their obligations.

4. In this case, the property in question was brought to sale in an auction and the Corporation had realised Rs. 8.60 lakhs. This amount was remitted by the petitioner along with 15% interest and the payment has been accepted. Therefore, the Corporation is not loosing in any manner if the mortgage is released in favour of the petitioner. In so far as the balance amount claimed by the Corporation is concerned that is secured by other properties mortgaged by the petitioner and the other co-obligants, which are not affected by releasing this particular item of property in any manner.

5. If the petitioner had not made payment and sought redemption of mortgage, this property would have been released to the auction purchaser and the Corporation could only prevent against other items of properties of the petitioner and that of the co-obligants. Therefore, even if the mortgage is redeemed and the property is released to the petitioner the Corporation is not prejudicially affected in any manner. The petitioner and the co-obligants will continue to be liable and their obligations are also not affected.

Therefore, I dispose of this writ petition directing that the Corporation shall release the property of the petitioner comprised in Sy. No.255/1 of Arackappady village by redeeming mortgage and retaining the other collateral security in tact. This shall be done, within a period of one month from the date of receipt of a copy of this judgment.

**(ANTONY DOMINIC, JUDGE)**

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**K.THANKAPPAN,J**

**CRL.A. NO.92 OF 1999**

**ORDER**

**25th May, 2007**